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No. 84-

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

CAROL A. JOHNSON
and
LARRY JOHNSON, her husband,
Petitioners

v.

ELI LILLY AND COMPANY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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50 pp

QUESTION PRESENTED FOR REVIEW

Where an action for damages as a result of the development of cancer by a daughter whose mother ingested Diethylstilbestrol was commenced in the District Court for the Western District of Pennsylvania and in opposition to a motion for summary judgment by reason of the statute of limitations plaintiffs filed an affidavit of an oncologist that the injury -- namely, cancer -- occurred to the wife-plaintiff when the cancer developed and not when her mother ingested the drug, are not the plaintiffs entitled to a jury trial on the factual issue of whether the New York statute of limitations bars the claim?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners, Carol A. Johnson and Larry Johnson, her husband, respectfully pray that a Writ of Certiorari issue to review the Judgment entered June 4, 1984, which affirmed an Order of the United States District Court for the Western District of Pennsylvania entered on

September 17, 1983 granting defendant's motion for summary judgment.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, which is a judgment order, is reproduced as Appendix A to this petition. The order of the Court of Appeals dated July 3, 1984 denying a petition for rehearing is not reported and is reproduced as Appendix B to this petition. The opinion of the United States District Court for the Western District of Pennsylvania, Teitelbaum, J., in support of the grant of defendant's motion for summary judgment is unreported and is reproduced as Appendix C to this petition.

JURISDICTION

This Court has jurisdiction to review the order of the Court of Appeals

pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, then according to the rules of the common law.

Rule 56 of the Federal Rules of Civil Procedure, subsection (c), provides, inter alia:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

STATEMENT OF THE CASE

(a) The Complaint

Petitioners Carol A. Johnson and Larry Johnson, her husband, brought a complaint against the defendant drug company averring that the wife-plaintiff's mother ingested the drug Diethylstilbestrol (DES); that as a consequence on July 6, 1981 the wife-plaintiff was diagnosed as having carcinoma *in situ* of the cervix and vaginal adenosis and a total abdominal hysterectomy was performed in a New York hospital. The action was instituted under strict liability under Section 402A and 402B of the Restatement of Torts as well as breach of warranty and negligence theories.

(b) Motion for Summary Judgment

The defendant filed a motion for summary judgment pursuant to Rule 12(c) of the Federal Rules of Civil Procedure raising the statute of limitations of the State of New York which admittedly was the law of the forum. The plaintiffs filed an answer to defendant's motion for judgment pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and requested that the court rule under Rule 56 of the Federal Rules of Civil Procedure. The defendant's motion is attached to this petition as Appendix D and plaintiff's answer to defendant's motion is attached as Appendix E. The affidavit of Dr. Alan N. Bress, an oncologist, is attached to this petition as Appendix F. The lower court granted

the defendant's motion for summary judgment holding that the action was barred by the New York statute of limitations.

The court held that if plaintiffs' argument were addressed to the court as a matter of first impression it is likely that the court would conclude that until an injury occurred or was discovered the cause of action did not accrue. However, the law of New York was held to bar plaintiffs' action.

(c) Appeal to the Third Circuit

Petitioners filed an appeal to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1291. On June 4, 1984, a panel of the Third Circuit filed an opinion without having heard oral arguments and entered

judgment affirming the lower court. The footnote to the Court of Appeals judgment order states:

> "The result in this case is not one that commends itself to us."

The footnote then held that the court was bound by the law of the State of New York and misstates the contention of the plaintiffs that:

> "Cause of action accrues at time of ingestion of drug, not discovery of injury."

Plaintiffs do not contend they did not discover the injury but rather that the injury did not occur until cancer developed as stated by Dr. Bress. That was the factual issue presented to the court below. A timely petition for rehearing was filed and denied.

REASONS FOR GRANTING THE WRIT

(a) The Constitutional Right Asserted

The Seventh Amendment to the Constitution of the United States guarantees to the petitioners a jury trial on the factual issue of when the injury occurred. Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment can only be granted when there is no genuine issue of a material fact. The defendant did not file a counter-affidavit but denied that the drug which it manufactured caused cancer in anyone. Thus, the only factual issues before the court below were those averred in the complaint, which must be taken as true for the purposes of considering a motion for summary judgment and the affidavit of Dr. Bress which indicates that the injury occurs when cancer

develops not when the mother ingests the drug. These issues must constitutionally be presented to a jury.

In a case similar to the instant action, Goodman v. Mead Johnson and Company, 534 F.2d 566 (3rd Cir. 1976), cert. denied, 429 U.S. 1038 (1977), the Court of Appeals held:

> These cases, while they provide a persuasive historical analogy for the Lopez discovery rule proceeding, do not suffice to decide the quite different issue of the respective role of judge and jury in the federal courts bound by the strictures of the seventh amendment. (571) . . . Moreover, the statute of limitations in the federal courts is a traditional legal defense. See Fed.R.-Civ.P. 8(c). That this defense would be decided in New Jersey courts by the judge rather than by the jury is not dispositive of the manner in which it should be decided in a federal court. (Emphasis added)

The New York statute of limitations provides that:

> "Section 214. The following actions must be commenced within three years: . . .
>
> (5) An action to recover damages for a personal injury. . . ."

The uncontroverted record in the court below established that until the wife plaintiff developed cancer she had not sustained an injury. Until an injury is sustained no cause of action accrues. See Locke v. Johns-Manville, 275 S.E.2d 900 (1981); Payton v. Abbott Labs, et al., 386 Mass. 540, 437 N.E. 2d 171 (1982). The Payton case held that absent the development of cancer a DES daughter has no cause of action. Dr. Bress' affidavit establishes that the wife-

plaintiff's cancer developed in March, 1981 and that the development of cancer is when the injury occurred to the wife-plaintiff and the action was brought within the statute of limitations period of the date the cancer occurred.

In Lockhart v. Hoenstine, 411 F.2d 455 (3rd Cir. 1969), cert. denied, 396 U.S. 941 (1969), it was held that a trial court's function in deciding whether a grant of summary judgment is merited is to decide whether factual issues exist and not to decide the issues of fact. To the same effect Toebelman v. Missouri-Kansas Pipeline Co., 130 F.2d 1016 at 1018 (3rd Cir. 1942).

The panel decision of the Court of Appeals for the Third Circuit failed to place the burden of demonstrating that

there is no genuine issue of material fact on the defendant who moved for summary judgment. Fairbanks Morse and Co. v. Consolidated Fisheries Co., 190 F.2d 817 at 824 (3rd Cir. 1951). When it is not clearly established that there is no genuine issue of a material fact, summary judgment must be denied. 6 Moore's, Vol. 2, ¶56.17 (58), at 1062-63, 2d Ed. 1980.

(b) The Procedural Issue Presented for Review.

Petitioners respectfully represent that the grant of summary judgment in actions such as the present one are contrary to the Federal Rules of Civil Procedure as promulgated by this Court. Judge Higginbotham in O'Brien v. Lilly, 668 F.2d 704 at 721 (3rd Cir. 1982),

cogently forecast what is occurring in lower courts and in the courts of appeals in this country when he stated:

> "But summary judgments were never intended to decrease basic fairness for litigants in order to increase a court's pace in the disposition of cases."

In footnote 5 to that statement Judge Higginbotham further observed:

> "I believe that this case exemplifies a disturbing tendency of a few judges in this circuit to grant summary judgment too freely in 'close cases' involving complex product liability matters."

In McLain v. Real Estate Board of New Orleans, Inc., 444 U.S. 232, 100 S.Ct. 502 (1980) this Court reversed the lower court for granting summary judgment in an antitrust case on the basis that

there were issues of fact which allowed the plaintiff to go forward in the court below rather than having summary judgment granted against him.

Rule 56 of the Federal Rules of Civil Procedure requires that there be no genuine issue of a material fact before summary judgment can be granted. Where there is a genuine issue of a material fact, then the traditional concept in the federal court system has been that the Seventh Amendment guarantees the right to trial by jury.

CONCLUSION

The Court of Appeals for the Third Circuit found that the result it reached in the case was not one that commends itself to the court. The district court held that very likely a different result

would obtain if the case were one of first impression.

The case is one of first impression for an affidavit of an oncologist was presented to the court, unanswered by the defendant, in which it was stated that the injury to the wife-plaintiff occurred when cancer developed. Thus, the language of the New York courts that it is not from the date of discovery of an injury are inapposite to the factual situation presented in the court below. In the case sub judice the factual situation presented was that the injury had in fact occurred within the statutory period. At least a finder of fact -- the jury -- could so hold. If a jury can find as a fact that the cause of action accrued within the period of the statute

of limitations, there is a genuine issue of a material fact which precludes the entry of summary judgment. At no time have petitioners argued that it is the date of discovery of an injury that governs the case and it is conceded that that is not the law in the State of New York. However, no case in New York had presented to a New York court an uncontroverted factual allegation by affidavit that the injury to the wife-plaintiff occurred when the cancer developed and not when the mother ingested the drug.

It is unconscionable that a twenty-nine year old female, who is the innocent victim of a drug manufacturer's breach of warranty and negligence -- the liability upon the drug company having been

established in other cases -- should be held to have no remedy because her injury -- cancer -- did not occur within three years of her having attained her majority which is the statutory period in New York. She had no cause of action for twenty-nine years until her cancer developed. She is childless and her hysterectomy deprives her of her right to bear children. The Seventh Amendment guarantees that the damage to that right should be submitted to the fact-finding jury. This Court should exercise its power, grant certiorari in this case and reverse the actions of the courts below.

Respectfully submitted,

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Counsel for Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-5696

CAROL A. JOHNSON and
LARRY JOHNSON, husband

Appellants

v.

ELI LILLY AND COMPANY

Appeal from the United States District Court for the Western District of Pennsylvania
(D.C. Civil No. 83-00427)
District Judge: Hon. Hubert I. Teitelbaum

Submitted under Third Circuit Rule 12(6)
May 24, 1984

BEFORE: GARTH and SLOVITER, Circuit and FISHER, District Judge *

JUDGMENT ORDER

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* Honorable Clarkson S. Fisher, United States District Judge for the District of New Jersey, sitting by designation.

APPENDIX A

After consideration of the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed. 1

Costs taxed against appellant.

By the Court,

/s/ Leonard Garth
Circuit Judge

ATTEST:
/s/ Sally Mrvos
Sally Mrvos, Clerk

DATED: Jun 4, 1984

---

1. The result in this case is not one that commends itself to us. However, we are bound by the law of the State of New York, see Thornton v. Roosevelt Hospital, 47 N.Y.2d 780, 417 N.Y.S. 2d 920, 391 N.E. 2d 1002 (1979) (cause of action accrues at time of ingestion of drug, not discovery of injury), and we are not free to modify New York law or to impose our conception of what the appropriate law should be. We note that the State of New York is one of a minority of states which subscribes to the doctrine that is controlling in this case. That, however, is a matter for the New York legislature to re-examine.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-5696

CAROL A. JOHNSON and
LARRY JOHNSON, husband

Appellants

v.

ELI LILLY AND COMPANY

PRESENT: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, Circuit Judges, and FISHER, District Judge *

The petition for rehearing filed by appellants, Carol A. Johnson and Larry Johnson, her husband, in the above-entitled case having been submitted to the judges who participated in the decision of this court, and to all the

other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court

/s/ Leonard Garth
Circuit Judge

DATED: Jul 3 1984

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* Honorable Clarkson S. Fisher, Chief Judge, United States District Judge for the District of New Jersey, sitting by designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAROL A. JOHNSON and
LARRY JOHNSON, her husband,
Plaintiffs

Civil Action
No. 82-427

v.

ELI LILLY AND COMPANY,
Defendant

OPINION AND ORDER

The plaintiff initiated the above captioned action against Eli Lilly and Company (Lilly) alleging that Carol A. Johnson was exposed *in utero* to diethylstilbestrol (DES) which eventually caused cancer. This Court has jurisdiction pursuant to 28 U.S.C. § 1332. Lilly has moved this Court for judgment on the pleadings pursuant to Rule 12(c) on the ground that plaintiffs' claims are barred by the statute of limitations. In

considering this motion the Court is bound by Pennsylvania's choice of law provisions and the stipulation of the parties to apply the substantive law of New York.

Lilly contends that under New York law a cause of action for hazardous exposure to drugs or chemicals accrues at the time of exposure and not when injury occurs or is discovered, citing Steinhardt v. Johns-Manville Corp., 54 N.Y.2d 1008, 446 N.Y.S.2d 244, 430 N.E. 1297 remittitur amended, 55 N.Y.2d 802, 447 N.Y.S.2d 437, 432 N.E.2d 139 (1981), appeal dismissed and cert. denied, 102 S.Ct. 2226 (1982); Thornton v. Roosevelt Hospital, 47 N.Y.2d 780, 417 N.Y.S.2d 920, 391 N.E.2d 1002 (1979); Schwartz v. Heyden Newport Chemical Corp., 12 N.Y.2d

212, 237 N.Y.S.2d 714, 188 N.E.2d 142 remittitur amended, 12 N.Y.2d 1073, 239 N.Y.S. 876, 190 N.E.2d 253, cert. denied, 374 U.S. 808 (1963) and Schmidt v. Merchants Despatch Transp. Co., 270 N.Y. 287, 200 N.E. 824 (1936). Plaintiffs contend that this Court is not bound by these holdings because in each of them the Court of Appeals assumed that exposure and injury were concurrent events. Plaintiffs have filed an affidavit by Dr. Bress which states that exposure to DES does not cause an immediate injury but rather causes an injury at some presently unpredictable future time, if at all. Plaintiffs instead urge this Court to follow Lindsey v. A.H. Robbins Co. Inc. (Supreme Court 2d Dept.) (January 17, 1983).

Were plaintiffs' argument being addressed to this Court as a matter of first impression, it is quite likely that the Court would conclude that until an injury occurred or was discovered or should have been, the cause of action did not accrue. However, this is not a matter of first impression, nor even one where a change in New York law might be anticipated. Regardless of actual fact, as a matter of New York law, introduction of drugs or chemical compounds is the event starting the injury. See, Thornton, supra, 47 N.Y.2d at 787, 417 N.Y.S.2d at 922, 391 N.E.2d at 1003. While this rule of law may rest on an erroneous factual interpretation, dissenting opinions of Judge Fuschberg in both Thornton and Steinhardt, make clear

that the existence of such an error has been argued before, and rejected by, the New York Court of Appeals.

The Lindsey case on which plaintiffs rely does not involve a drug or chemical but rather a foreign solid object, a Dalkin Shield, and is distinguishable on that basis. Moreover it is an opinion of only an intermediate appellate court. While it may ultimately be recognized as one incremental step to a change in New York law, it cannot be recognized now as signalling such a change because of the recent holdings of the highest court in New York rejecting, at least for purposes of drugs and chemicals, a discovery rule of injury in determining when a cause of action accrues.

APPENDIX C

In light of the foregoing analysis of New York law, Lilly is entitled to judgment on the pleadings. Carol A. Johnson's last in utero exposure to DES occurred prior to her birth on July 24, 1952. Tolling the statute of limitations duing her minority, the three year period of limitations began to run on July 24, 1973 and expired July 24, 1976. The instant suit was not filed until 1983 and is thus barred.

An appropriate order will issue.

DATED: September 19, 1983.

/s/ Hubert I. Teitelbaum
Hubert I. Teitelbaum
Chief United States District Judge

ORDER

AND NOW, September 19, 1983, upon consideration of defendant's motion for judgment on the pleadings pursuant to Rule 12(c), and in accordance with the foregoing opinion, IT IS HEREBY ORDERED that said motion is granted.

/s/ Hubert I. Teitelbaum
Hubert I. Teitelbaum
Chief United States District Judge

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAROL A. JOHNSON and LARRY JOHNSON, her husband,

Civil Action No. 83-427

Plaintiffs

vs.

ELI LILLY AND COMPANY,

Defendant

MOTION OF DEFENDANT ELI LILLY AND COMPANY FOR JUDGMENT PURSUANT TO RULE 12 ON THE PLEADINGS

On the basis of the allegations set forth in plaintiffs' Complaint, defendant Eli Lilly and Company ("Lilly") moves, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, for entry of judgment on the pleadings against plaintiffs Carol A. Johnson and Larry

Johnson on the grounds that all claims asserted by plaintiffs were brought beyond the time permitted by the New York statute of limitations and that defendant Lilly is entitled to judgment as a matter of law on all counts.

1. According to the Complaint, plaintiff Carol A. Johnson's mother ingested the prescription drug diethylstilbestrol ("DES") while pregnant with plaintiff Carol A. Johnson in 1952 (Complaint at ¶5). Plaintiff Carol A. Johnson was born in Elmira, New York on July 24, 1952 (Complaint at ¶6). Plaintiffs allege that as a result of exposure in utero to DES, plaintiff Carol A. Johnson suffered serious medical

conditions which resulted in a total hysterectomy and other surgical procedures (Complaint at ¶8).

2. Plaintiff Carol A. Johnson's surgery was performed in Rochester, New York (Complaint at ¶7).

3. Plaintiff make claims under § 402A and § 402B of the Restatement (second) of Torts, and under theories of breach of warranty and negligence.

4. At plaintiffs' request, defendant has agreed that the law of the State of New York applies in this action.

5. In its answer, Lilly denied liability and asserted a number of defenses including the statute of limitations (Third Defense, Answer at ¶3).

6. Under applicable law, plaintiffs' claims are time barred because they were not raised within three years of plaintiff's wife's attainment of majority.

WHEREFORE, defendant Lilly requests that the Court enter judgment against plaintiffs and in favor of defendant Lilly, dismissing the Complaint.

Respectfully submitted,
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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAROL A. JOHNSON and
LARRY JOHNSON, her husband,
Plaintiffs

Civil Action
No. 83-427

vs.

ELI LILLY AND COMPANY,
Defendant

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR JUDGMENT PURSUANT TO RULE 12(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Although defendant has moved under Rule 12(c) of the Federal Rules of Civil Procedure for entry of judgment on the pleadings, plaintiffs file this answer and will file affidavits in opposition to the motion so that the motion should then be decided under Rule 56 of the Federal Rules of Civil Procedure. Further answering said motion, plaintiffs set forth the following:

APPENDIX E

1. Paragraph 1 of the motion is admitted in that it is admitted that the wife-plaintiff's mother ingested DES manufactured by the defendant in 1952 and that the wife-plaintiff was born on July 24, 1952. It is denied that plaintiffs allege that wife-plaintiff suffered serious medical conditions or injury in 1952 when the drug was ingested but, on the contrary, aver that the injury occurred in March, 1981 when the wife-plaintiff developed cancer requiring her total hysterectomy. For further answer, plaintiffs aver that defendant has the burden of proving that the injury in fact is time barred by the statute of limitations. Plaintiffs aver that to the

best of their knowledge, information and belief, wife-plaintiff's injury did not occur until March of 1981.

2. Admitted.

3. Admitted.

4. It is admitted that the law of the State of New York applies, but it is averred that under the law of this circuit the issues presented by this answer and affidavits to be filed by plaintiff create disputed issues of fact which must be resolved by a jury and not by the Court.

5. It is admitted that Eli Lilly and Company denied liability and asserted the defenses set forth. However, as stated by plaintiffs, the defense of

statute of limitations is a factual issue to be presented to the jury.

6. Denied. Plaintiffs aver that plaintiffs' claims were timely filed for the reason that they were filed within the statutory period of the wife-plaintiff sustaining an injury, namely, cancer. It is further averred that the defendant is asking that wife-plaintiff would have been required to bring an action in 1976 before there was an indication that she had in fact been injured as a result of her mother's ingestion of DES and her cancer did not develop until 1981, five years after the defendant avers the statute of limitations ran.

7. Plaintiffs aver that the cause of action for which this suit was filed occurred when wife-plaintiff's injury, namely, cancer, developed and that her medical practitioners had advised her that before the cancer developed she in fact had sustained no injury as a result of her mother's ingestion of DES.

8. The statute of limitations as contended for by defendant is unconstitutional in that it would deprive the wife-plaintiff of a cause of action on a theory that she in fact should have filed suit against the defendant five years before she knew that she had sustained an injury.

WHEREFORE, the plaintiffs deny that defendant is entitled to judgment and, on the contrary, under Rule 56 of the Federal Rules of Civil Procedure there is a genuine issue of a material fact to be adjudicated by a jury.

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SMITH YATCH & TRIMM

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Harold Gondelman

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAROL A. JOHNSON and
LARRY JOHNSON, her
husband,
Plaintiffs — Civil Action
No. 83-427

vs.

ELI LILLY AND COMPANY,
Defendant

AFFIDAVIT IN OPPOSITION TO DEFENDANT'S
RULE 12(c) MOTION AND EXHIBITS

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF ALLEGHENY : SS.

I, ALAN N. BRESS, being duly sworn according to law, depose and say that I am a physician, graduate of the University of Pittsburgh Medical School; that I am on the staff of the following hospitals: Montefiore, Magee-Womens, St. Francis General, ST. Margarets Memorial and Presbyterian-University, and that for the past twenty years I have specialized

virtually exclusively in medical oncology after a fellowship in same at Memorial-Sloan-Kettering Cancer Center in New York City; that I have reviewed the hospital record at St. Josephs Hospital, Elmira, New York, for the admission of July 24, 1952 to July 29, 1952 when Carol M. Philbin was delivered; I have also reviewed the hospital records of Carol Brown at the Genesee Hospital, Rochester, New York for the admission of July 18, 1977 to July 23, 1977 and a second admission of July 6 to July 12, 1981; I am familiar with Diethylstilbestrol (DES) and the literature on statistics relating to DES daughters incidences of malignancy which have occurred; that in light of my

background, training and experience and my review of the records, I am of the opinion that one cannot state with medical certainty that a specific injury occurred on the ingestion of DES by the patient's mother while she was in utero or that it caused immediate injury to the daughter's body. I am further of the opinion that DES is in fact a substantial factor in the cause of cancer and that the resultant cancer after a time lapse is the then injury to the patient's body after exposure to other as yet unknown factors; and that the dates of ingestion of DES by the mother bears no necessary

medical relationship to when and if a malignant tumor will occur in the person exposed to DES.

/s/ Alan N. Bress
Alan N. Bress

SWORN TO AND SUBSCRIBED
before me the 13 day of
May, 1983.

Notary Public